SUPREME COURT, U. S.

FILED

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JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 1025

RICKY L. COCHRANE,
PETITIONER,

v.

HAROLD V. LANGLOIS, WARDEN,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF RHODE ISLAND

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Certiorari has been granted from State Court's denial of Habeas Corpus in *Herndon* v. *Lowry*, 301 U.S. 242 (1937) and *Williams* v. *Kaiser*, 323 U.S. 471 (1945).

Questions Presented

1. Is a state statute which permits an administrative officer to transfer a minor who has been committed to a training school for boys to an adult penal institution for an indeterminate period without any hearing a violation of the 5th, 6th, 8th and 14th amendments to the United States Constitution?

2. Is the transfer by an administrative officer of a minor from a training school for boys to an adult penal institution purportedly in compliance with a state statute an unconstitutional application of the statute in violation of the 5th, 6th, 8th and 14th amendments to the United States Constitution?

3. Whether a Petition for Habeas Corpus directed to the Supreme Court of the State of Rhode Island on behalf of a minor of the age of 15 years who has been administratively transferred from a training school for minor boys to a penal institution for adults for a period of five months can be rendered moot after the Family Court transferred the minor boy back to the Training School subsequent to the filing of the petition for Habeas Corpus.

Statement of the Case

Petitioner, a minor born on March 15, 1952, was committed to the Rhode Island Training School for Boys on or about August 23, 1967, by the Family Court of the State of Rhode Island. On December 28, 1967, he was transferred to the Adult Correctional Institution by oral order and later by written order of the Brigadier Gen-

eral, Paul D. Sherman, Assistant Director of Correctional Services of the Department of Social Welfare, State of Rhode Island. Respondent Langlois is the Warden of the Adult Correctional Institution. The transfer was purportedly in compliance with Rhode Island G.L. 1956 Title 13-4-12 as amended.

The transfer was made because the Petitioner and others allegedly destroyed portions of a cottage used at the institution for disciplinary confinement. Upon transfer petitioner was immediately put in the "Hole." He was kept there alone for 32 days. He lost about 24-25 pounds. He was then transferred to the Segregation Block of Medium Security for about four or five days. On January 30, 1968 he was transferred to the Maximum Security Section where he was kept with about 94 adult inmates until at least June 5, 1968. He saw a psychiatrist once. He saw a counselor once every two weeks. (Petitioner's Affidavit dated April 16, 1968 and June 3, 1968) On June 5, 1968, the Family Court ordered the Petitioner returned to the Training School and on July 17, 1968 it released him, placing him on probation until its further order. (Decision of Rhode Island Supreme Court). However, on June 5, 1968, the very same day the Family Court ordered his return to the Training School, he was remanded back to the Adult Penal Institution. (See letter of Senior Counselor dated 12/12/68 attached herewith; said letter also demonstrates the Petitioner's continued incarceration in the penal institution on various occasions subsequent to June 5, 1968).

The petition for Habeas Corpus to the Rhode Island Supreme Court was filed on April 15, 1968, while Petitioner was still confined in the Adult Penal institution. The petition for Habeas Corpus alleges violation of federal constitutional rights. On April 23, 1968, the Respondent was directed to file his Answer to the Petition for Habeas

Corpus and to show cause why the Writ should not issue as prayed. Said answer is to be in compliance with Provisional Order No. 7 of the Rhode Island Supreme Court. Provisional Order No. 7 provides that the answer shall be filed within fifteen days unless the time is enlarged by the Court or a Justice thereof. On May 9, 1968, Respondent moved for an enlargement of time. An Ex Parte order was entered extending the time for Respondent's Answer to May 22, 1968, at which time the answer was filed. Within the ten days allowed by Provisional Order No. 7, on June 3, 1968, the Petitioner's attorney filed his reply to Respondent's Answer. On June 11, 1968, the Supreme Court entered an Order granting the Petition for a Writ of Habeas Corpus and the Writ issued directed to the Respondents returnable July 2, 1968. On June 13, 1968, Petitioner moved for a special assignment because Petitioner was still incarcerated in the Adult Correctional Institution and because Rules 13 and 15 of the Rhode Island Supreme Court's rules would have prohibited the matter from being heard before late in the fall session of the Court. This motion was denied by the Court on June 19, 1968. Thereafter, on the 28th day of June, 1968, Petitioner filed a Motion to reinstate the Motion for Special Assignment. This motion was granted by Court on the 9th day of July, 1968 and the matter was assigned "for hearing on the merits to the calendar for the first Monday in October, 1968." The merits were argued on October 7, 1968 and the per curiam decision dismissing the Petition because of mootness was filed on October 28, 1968.

Reasons for Granting the Writ

1. It is submitted that Section 13-4-12 of the Rhode Island General Laws of 1956, as amended, is unconstitu-

tional on its face and as applied in violation of the 5th, 6th, and 14th amendments to the United States Constitution.

Prior to an amendment in 1963 which required the administrator to merely notify the Family Court of the transfer. The Rhode Island Supreme Court upheld the statute and the transfer procedure. *Long* v. *Langlois*, 93 R.I. 23; 170 A.2d 618, decided May 18, 1961. However, *Long* v. *Langlois* was decided before *Kent* v. *U.S.*, 383 U.S. 541 (1966); *In Re Gault*, 387 U.S. 1 (1967). *In Re Whittington*, 389 U.S. 819 (1968). Neither the statute nor the application of the statute which permits the transference of a juvenile without a hearing meets the requirements of the Fifth, Sixth and Fourteenth Amendments of the U.S. Constitution.

If *Kent* stands for the proposition that a juvenile is entitled to a hearing on waiver from a juvenile court to an adult court, then *Kent* must also require a hearing before transfer from a non-penal institution to a penal institution, a jail for criminals. If *Gault* requires Fifth and Sixth Amendment guaranties to be afforded to minors before they can be ultimately detained as delinquents, then *Gault* just as surely requires that minors must be afforded Fifth and Sixth Amendment guarantees before they can be confined as criminals in criminal or penal institutions. For in essence, petitioner is indeed being punished, without a trial, without a hearing or without a benefit of counsel, because of allegedly violent, destructive and most assuredly criminal acts for which he can be charged and convicted.

Petitioner contends that the statute which permits an administrative official to impose punishment is as unconstitutional as was the statute considered by this Court in *Baxstrom* v. *Harold*, 383 U.S. 107 (1966). In *Baxstrom* this Court stated:

> "Petitioner was further denied equal protection of the law by his civil committment to an institution maintained by the Department of Correction beyond the expiration of his prison term without a judicial determination that he is dangerously mentally ill such as that afforded to all so committed except those, like Baxstrom nearing the expiration of a penal sentence."

Such is the case here whereby the petitioner was transferred from a non-penal to a penal institution upon the invocation of administrative discretion without a judicial determination.

Several jurisdictions, even prior to *Kent*, have held that similar statutory provisions permitting administrative transfers are contrary to the constitution. *White* v. *Reid*, 126 F. Supp. 867 (Dec. 1954); *In Re Rich*, 216 A.2d 266 (Vt. 1966). In *State* v. *Owens*, 416 P.2d 259 (Kansas 1966), considering *Kent*, the Court said:

> "We hold confinement in a penal institution will convert the proceedings from juvenile to criminal and require the observance of constitutional safeguards. The non-criminal aspect is the legal backbone of the constitutionality of all American Juvenile Court legislation. If after juvenile proceeding, the juvenile can be committed to a place of penal servitude, the entire claim of *parens patriae* becomes a hypocritical mockery. Such action confines a person in a penal institution without having been found guilty of a crime." 416 P.2d at page 269.

And in the Vermont case the Court said:

> "To this end we hold that any transfer from Weeks School to a penal institution must be founded upon

> a criminal prosecution and conviction attended by the constitutional guarantees appropriate to such a proceeding. Transfers under the authority of 28 V.S.A. Sec. 415 can constitutionally be made only under such circumstances." 216 A.2d at page 270.

Such tranfers and the lack of due process involved was noted by Mr. Justice Fortas in *Gault* supra at page 20, note 26, when he pointed out that "The impact of denying fundamental procedural due process to juveniles involved in 'delinquency' charges is dramatized by the following considerations . . . (3) In about one-half of the States a juvenile may be transferred to an adult penal institution after a juvenile court has found him 'delinquent'."

2. It is further submitted that transfer and the committment of the petitioner to the "Hole" for 32 days and his subsequent confinement as set forth in his affidavit without any attempts at rehabilitation amounts to cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution applicable to the States through the due process and equal protection clauses of the Fourteenth Amendment. *Robinson v. California,* 370 U.S. 660, 666 (1962). *Francis* v. *Resweber,* 329 U.S. 459, 463 (1947).

In *Kent* the Court emphatically stated that "In our penal system, a juvenile shall not be jailed along with adults except in the rarest of circumstances" *383 U. S. at 556.* Discussing the power of punishment, this Court stated in *Trop* v. *Dulles,* 356 U.S. 86 (1958) that the power must be exercised within the limits of civilized standards. "The Eighth Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society" 356 U.S. at 101.

This petition is pertinent because were the practice of unchecked administrative handling of juveniles to continue,

the goals envisioned by the creation of the juvenile court system as discussed by Justice Black in his concurring opinion in *Gault* will continue to be just goals and not the mark of progress in a maturing society. *387 U.S. at 60.*

The imposition of criminal punishment at the instance of an administrative officer far greater than that imposed by the Juvenile Court, whereby a juvenile was exposed to the forms of punishment used to reform hardened criminals constitutes action which is not only contrary to the notion of juvenile rehabilitation, but will leave an indelible impression of the concept of a "just society" in the mind of a juvenile which might never be eradicated.

3. Petitioner, in seeking a release from a penal institution in which he had been confined without the benefit of a charge, arraignment, counsel, hearing, or trial, but nevertheless held as a criminal, was denied the opportunity for a review as to the constitutionality of such a five-months incarceration on the grounds of mootness. This Court only last June decided *Carafas* v. *LaVallee,* 391 U.S. 234 (1968) and *Sibron* v. *New York,* 392 U.S. 40 (1968). In *Carafas,* this Court held that Federal Habeas Corpus Jurisdiction did not terminate because the Petitioner's sentence had expired before his application "was finally adjudicated and while it was awaiting appellate review." In *Sibron,* on appeal from a judgment of the New York Court of Appeals, the fact that a six-months sentence had been served did not render the case moot. "Mere release of the prisoner does not mechanically foreclose conside ation of the merits by this Court." *Sibron,* supra, 392 U.S. 51. Nor should release foreclose consideration by a State Court particularly where there are important allegations of the violation of Federal Constitutional rights as well as a complete lack of any other "avenue of judicial review of deprivations of constitutional right." *Sibron,* supra, 392 U.S. at page 52.

Not only will Petitioner here sustain collateral consequences as a result of his committment to an adult penal institution but as demonstrated in the record he will suffer more direct consequences. The letter of the Training School dated December 12, 1968 shows that whenever he is apprehended or detained by the Family Court, the administrators transferred him to the Adult Penal Institutions. This is likely to continue. Certainly then this case meets the test for survival, *Sibron,* supra, 393 U.S. at page 55.

The validity of the Statute and the validity of the actions of the administrative officers can never be challenged unless the juvenile is permitted to remain in the penal institution while his case is being processed to the appellate court. This was recognized by Rhode Island Family Court Justice Michael DeCiantis in another such case. (In the matter of Tilden Brown Jr. No. W-5136- decided 11/13/68, reported in part in 4 Criminal Law Reporter 2203-2204). Referring to the statute in question, Judge DeCiantis said:

> "Another shocking situation that arises under this law is that the Court finds itself in the predicament of 'locking the barn door after the horse had been stolen' because the juvenile may be returned to the Training School before or while a petition is pending for hearing before this Court. The question then becomes moot. If the juvenile or the parents or the guardian desire that the question of validity of the transfer be decided by the higher tribunal, it can only be accomplished by allowing the juvenile to linger in a penal institution. This would seem to force the juvenile to forego his constitutional right to appeal in order to exercise his constitutional right to be free from cruel and unusual punishment."

Conclusion

For the reasons set forth above, certiorari should be granted.

Respectfully submitted,

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(Of Counsel)

APPENDIX A

SUPREME COURT

No. 423 - M. P.

RICKY L. COCHRANE,

v.

HAROLD V. LANGLOIS, WARDEN, ET AL.

OPINION

PER CURIAM. This is a petition for a writ of habeas corpus directed to the warden of the adult correctional institutions and to the assistant director of social welfare in charge of correctional services. After our examination of the petition, we ordered the respondents to show cause why the writ should not issue. The respondents appeared and filed an answer.

The petitioner is a 16-year-old boy who prays that he be released from the state prison because his incarceration violates certain of his constitutional rights and accordingly is illegal. In their answer, respondents admit that petitioner is confined at the prison but deny that petitioner's detention is illegal in any respect. In defending their actions, respondents point to the provisions of G.L. 1956, § *13-4-12*, as amended, which provide that any individual who has been committed to the training school for boys may be transferred by the assistant director of social welfare in charge of correctional services to the adult correctional institutions whenever this official believes that such a transfer will best serve the purpose of "reforming" the boy. The respondents' answer shows that in October 1967, petitioner had been adjudged a delinquent by the family court and was committed to the training school until fur-

ther order of the court. On December 28, 1967, respondent assistant director witnessed petitioner and other inmates at the school as they wilfully destroyed certain portions of a cottage used at the institution for disciplinary confinement. This respondent thereupon ordered petitioner to be transferred to the prison and pursuant to the provisions of § 13-4-12, as amended, notified the family court of his action. Some months later, the instant petition was filed with us. On June 11, 1968, we ordered the writ herein to issue.

In their supplementary brief and at oral argument before us on October 7, 1968, the respondents informed this court that the petitioner had been released from the adult correctional institutions as the result of certain proceedings instituted in the family court. The pertinent records of that tribunal have been furnished to us and we have verified the respondents' representations. The records show that on June 5, 1968, the family court ordered the petitioner returned to the training school. Subsequently the court entered an order on July 17, 1968, releasing the petitioner from the training school and placing him on probation until its further order. Therefore, we are of the opinion that the actions of the family court have rendered moot any issues raised by the instant petition.

The petition for habeas corpus is denied and dismissed and the writ heretofore issue is quashed.

APPENDIX B

CHAPTER 4-REFORM SCHOOL

13-4-12 Transfer Of Inmates To And From Other Institutions. (1956 G.L. As Amended)

The assistant director of social welfare in charge of correctional services may in his discretion transfer any inmate of the training school for boys to the adult correctional institutions when he believes that such transfer will best serve the purpose of reforming such inmate, and in like manner in his discretion may transfer any inmate of said institutions to the training school for boys. Whenever said assistant director shall cause such transfer to be made, he shall, within forty-eight (48) hours thereof, notify the family court of such action together with the reasons therefor, and he shall report on the status of any such inmate so transferred whenever requested by the family court. Any inmate transferred to the adult correctional institutions as herein provided shall be kept separate and apart from the adult inmates in so far as such separation shall be deemed for the best interest of the minor inmate.

APPENDIX C

The Supreme Court of the State of Rhode Island and Providence Plantations, pursuant to the provisions of G. L. 1956, § 8-3-2, does make and hereby publish a provisional order as follows for the regulation of practice therein and the conduct of the business thereof, to become effective on the thirtieth day of September A. D. 1966, and to remain and continue in effect thereafter until altered or revoked by further order:

PROVISIONAL ORDER NO. 7

The following procedures shall be followed in the event that the Court, upon the filing of an application for a writ of habeas corpus, shall direct the respondent to show cause why the writ should not issue:

(a) Within fifteen (15) days (unless enlarged by the Court or a Justice thereof) after he shall have received notice of the entry of the show cause order, the respondent shall file in the office of the Clerk of the Supreme Court a signed answer under oath in which, in addition to the factual matter required to be included in a return to a writ of habeas corpus pursuant to G.L. 1956, § 10-9-8, he shall set forth a statement with particularity of any additional facts upon which he justifies his detention of the applicant, and further serve a copy of said answer upon the applicant or his attorney of record, if he has one. He shall append thereto a memorandum of law setting forth his reasons why the writ, application for which has been made, should not issue together with citations of authorities in support thereof.

(b) The applicant or his attorney within ten (10) days (unless enlarged by the Court or a Justice thereof) after receipt of the answer and memorandum shall, if he desires to controvert or reply to any of the matters set forth in the answer, file in the office of the Cerk of the Supreme Court

a signed reply under oath disclosing any matter or ground in further support of his application and/or in denial of the facts set forth in the answer, and further serve a copy of said reply upon the respondent or his attorney of record, if he has one. He shall append thereto a memorandum of law setting forth his reasons why the writ should issue or his release should be ordered together with citations of authorities in support thereof.

(c) All answers or replies filed pursuant to the provisions hereof in the office of the Clerk of the Supreme Court shall be accompanied by nine copies, provided, however, that the requirement for the filing of copies shall be waived if the person filing a reply is without counsel and if, because of the place of his detention, the preparation of copies is not feasible.

(d) Wherever it is provided herein that service shall be made upon the opposing party or his attorney of record it shall be by delivery to the person to be served or by leaving the same at his office with some person in charge thereof or by mailing the same by certified or registered mail, return receipt requested. A certificate of compliance with the notice requirements hereof, signed either by the party or his attorney, shall accompany any answer or reply filed in the Clerk's office pursuant to this rule.

(e) Upon the granting or denying of the writ or the ordering of the release of the applicant, an appropriate order will be entered, and the Clerk will notify counsel of record. If the application for the writ shall be granted, the writ and appropriate process shall issue and the cause shall then, without the necessity of either party filing any further pleadings, be considered as docketed on the return day and shall thereafter be assigned for hearing pursuant to the provisions of Rule 13, and the briefs of the respective parties shall be filed pursuant to Rule 15.

Entered as the Order of this Court this thirtieth day of September, 1966.

. . . . . .

Clerk of the Court

APPENDIX D

[LETTERHEAD — RHODE ISLAND TRAINING SCHOOL FOR BOYS]

December 12, 1968

Mr. Philip Weinstein
Abedon, Michaelson, Stanaber, and Biener
626 Industrial Bank Building
Providence, Rhode Island
Re: COCHRANE, Ricky L. #18510
Dear Mr. Weinstein:

The following is a summary of the transactions that took place from the month of June to the present time:

On June 5, 1968 Ricky was returned to the Training School from the Adult Correctional Institution, where he was since December 28, 1967. On the same day (June 5, 1968) he was discharged. Then again on the same day he was remanded to the Training School and then transferred to the A.C.I. On June 26, 1968 he was returned to the Training School and discharged on the same day. On July 17, 1968 he was returned here and then discharged (same day). On August 30, 1968 he was re-detained by the Family Court until September 3, 1968, when he was discharged. Then on September 3, 1968 he went to the A.C.I., from where he was discharged on September 11, 1968. On the same day (September 11, 1968) he was remanded to the A.C.I.; and Ricky was discharged on September 17, 1968.

On October 1, 1968 he was re-detained by the Family Court until later on that day, when he was transferred to the A.C.I. He went to the Family Court from the A.C.I., and he was discharged on October 9, 1968. On the same day (October 9, 1968) he was remanded to the Training

School. On October 12, 1968 he ran away and since then has not returned; therefore, in our books he is still on a runway status.

Very truly yours,

(s) JAMES PRENDERGAST
JAMES PRENDERGAST
Senior Counselor

JP:ok

APPENDIX E

[Typewritten From The Handwritten Copy]

AFFIDAVIT

I, Rickie A. Cochrane, on oath depose and say:

I was born on March 14, 1952; I was committed to the Training School by the Family Court in October, 1967. I was transferred to the Adult Correctional Institution on December 27, 1967 and was immediately put in the "HOLE." I was there for 32 days. During this time I lost about 24-25 pounds. I was alone in a small room about 4 feet by 6 feet. I was not permitted any reading matter, cigaretts, tooth paste, nor was I permitted to wash or shower but for every ten (10) days. After I got out of the "HOLE," I was put into the Segregation Block of Medium Security, I was there for about four (4) or five (5) days. I was brought over to the Maximum Security on January 30, 1968 where I have been ever since in the Awaiting Trial Section. I am with about 94 other inmates who are awaiting trial on various charges. I am in a cell by myself all day except between the hours of 4 to 9 P.M. every day when we are permitted to watch television at which time I am with all the other inmates who are awaiting trial. On week-ends, all awaiting trial people are permitted to go into the yard for exercise. I could go to the gym every day, but I am afraid to do so because you would have to go with the regular inmates. I do nothing all day long but sit in my cell. I am not seeing any psychiatrists nor have any tests been done on me. I see a counselor about once every two weeks.

I don't feel I belong here — I don't think I am being

helped here. I want to get help but nobody is doing anything to help me here. I have gone through the eighth grade in school. I was expelled from Gilbert Stuart Junior High School. I tried to get some mechanical training through Progress For Providence but then I was sent to the training school. I asked to be taught a trade at the training school but the Superintendent told me they had no trades and that I would have to wait until I got out.

I have read these two pages and believe they are the truth.

.....

RICKIE A. COCHRANE

Subscribed and sworn to before me this 16th day of April, A.D. 1968.

(s) MILTON STANZLER
Notary Public

AFFIDAVIT

I, RICKIE COCHRANE on oath depose and say:

That I have had the Respondent's Answer read to me; that only the point of which I have knowledge and which I desire to controvert are as follows:

There were no lights in the cell in the Hole and there was no bed in the cell which I occupied in the Hole; during confinement in the Hole I saw no doctor and the meals did not appear to be the regular meals; that after being taken from the Hole, I was placed in Segregation unit at the reformatory for about one (1) week before being transferred to Maximum Security; I have had no counsel-

ling since mid April; I have seen a psychiatrist once since then for ten (10) minutes.

(s) RICKIE COCHRANE

Subscribed and sworn to before me this 3rd day of June, 1968.

(s) MILTON STANZLER
Notary Public

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RICKY L. COCHRANE,
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v.

HAROLD V. LANGLOIS, Warden,
RESPONDENT.

(Petition for Writ of Certiorari to the Supreme Court of Rhode Island)

BRIEF IN OPPOSITION

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BRIEF IN OPPOSITION

Opinion Below

The Order of the Supreme Court of Rhode Island is reported in 247 A2d 91.

Jurisdiction

The jurisdictional requisites are adequately set forth in the Petition.

Questions Presented for Review

1. Whether a petition for Habeas Corpus lies when there is another adequate remedy readily available to the petitioner?
2. Whether a petition for Habeas Corpus in Rhode Island Supreme Court is rendered moot when another remedy available to the petitioner, in family court, is used and petitioner is freed from the restraint which was the basis of his petition?
3. Is a State Statute which provides for the administrative transfer of a minor from a juvenile institution to an adult institution, and a transfer made in compliance with said statute, a violation of the 5th, 6th, 8th, and 14th amendments to the United States Constitution?

Statement of the Case

Petitioner, a minor, born on March 14, 1952, had a record in Family Court, the court having exclusive jurisdiction over juveniles in Rhode Island, dating back to August of 1964 and had been detained at the Rhode Island Training School for Boys on prior occasions.
23, 1967.

On October 2, 1967, the petitioner pleaded guilty to charges of delinquency involving the driving off of an automobile without the permission of the owner and possession of a switch blade knife. He was adjudged guilty on his plea and ordered detained at the training school until further order of the Family Court.

On December 28, 1967, General Sherman received a call from the Training School that the petitioner and another minor were destroying a cottage at the Training School, i.e., "B Unit" which was used for disciplinary confinement. General Sherman went to the Training School and

observed the destruction which was being wreaked by the petitioner and the other minors on the cottage, in tearing a cement block from a wall and breaking down six doors. Whereupon, General Sherman telephoned Chief Justice McCabe of the Family Court and was advised to transfer the minors to the Adult Correctional Institutions under his authority as Assistant Director of Correctional Services, Department of Social Welfare. General Sherman then orally ordered the minors transferred to the Adult Correctional Institutions under 13-4-12, General Laws of Rhode Island, 1956, as amended, and followed his verbal order with a written communication on December 29, 1967, also notifying the Family Court as required by the above statute.

On transfer to the Adult Correctional Institutions the petitioner was placed in the Reformatory building. The entire building consists of three floors of north and south wings, the second and third floors being dormitories. The second floor of the southern wing contains a medium sized dormitory and the further southern portion of this wing contains the cell block section called in prison vernacular, by the prisoners themselves, the "hole", because it is a place of confinement for disciplinary purposes.

Upon removal from the cell block, hereinbefore described, the petitioner was placed in the Maximum Security Facility where he was detained with adult prisoners. The only alternate to such an arrangement being detention within the cell block already mentioned on a segregated basis since there is no institution in Rhode Island other than the Rhode Island Training School for Boys and the Adult Correctional Institutions for confinement of a juvenile. There are no walls encircling the training school and the only place the petitioner would be confined at the training school was the "B Unit" which he was destroying at the time of his transfer. As will be noted from the

letter in petitioner's Appendix D, the petitioner was able to "run away" from the training school.

There has never been an evidentiary hearing on the Habeas Corpus petition filed by petitioner. Therefore, his "facts" concerning loss of weight, etc., have never been verified and are denied at this time for lack of knowledge concerning such claims.

While the petition was pending in the Rhode Island Supreme Court, the state learned that the petitioner had been freed of restraint by the Family Court. As soon as the state learned this fact, it informed the Rhode Island Supreme Court as set forth in that court's opinion.

Argument

I. Habeas Corpus Does Not Lie When Another Remedy Is Readily Available To The Petitioner.

There can be no doubt that another remedy was available to the petitioner in this case. As set forth in the opinion of the Rhode Island court in the petitioner's Appendix A, the Family Court, in response to action initiated on behalf of petitioner, ordered the petitioner returned to the training school from the adult institution on June 5, 1968 and released the petitioner completely on July 17, 1968 subject to probation. It is equally as obvious that this remedy could have been pursued at any time subsequent to December 28, 1967, when the petitioner was transferred to the adult institution.

It has long been the rule that a petition for habeas corpus will not lie when an adequate remedy is otherwise available. *Ex Parte Hawk,* 321 U.S. 114, (1944). This rule has been followed in Rhode Island, *Ex parte Scamporino,* 30 R.I. 587, 76 A. 761, (1910); *Ex parte Morey,* 28 R.I. 242, 66 A. 575, (1907); *Reynolds v. Langlois,* ....

R.I. ...., 209 A.2d 237, (1965); *Harris* v. *Langlois,* .... R.I. ...., 212 A.2d 715, (1965).

The other remedy in this case is that suggested by the Court in *Long* v. *Langlois,* 93 R.I. 23, 170 A.2d 618, (1961), i.e., a petition to modify the order of committment under 14-1-42, General Laws of Rhode Island, 1956.

The statute in question reads:

> 14-1-42. Modification of order of commitment — Release, detention, or recommitment of child. — An order of commitment made by the court in the case of child shall be subject to modification or revocation from time to time. A parent, guardian or next friend of a child who has been committed or assigned by the court to the custody of an institution, agency or person may at any time file with the court a verified petition, stating that such institution, agency or person has denied application for the release of the child or has failed to act upon such application within a reasonable time. If the court is of the opinion that an investigation should be had, it may, upon due notice to all concerned, proceed to hear and determine the question at issue. It may thereupon order that such child be restored to the custody of its parent or guardian or be detained in the custody of the institution, agency or person; and may direct such institution, agency or person to make such other arrangements for the child's care and welfare as the circumstances of the case may require; or the court may make a further order or commitment.

It seems obvious from a reading of the above statute that it is more than an adequate remedy for a situation as presented in this case without recourse to habeas corpus in the Rhode Island Supreme Court. The phrase "If the

court is of the opinion that an investigation should be had, it may, upon due notice to all concerned, proceed to hear and determine the question at issue," would have given the petitioner the "hearing" he so vehemently claims he should had. Ironically, too, it would afford a much more speedy mode of review of his order of commitment than that of seeking habeas corpus.

II. The Petition For Habeas Corpus Was Rendered Moot When Another Remedy Available To The Petitioner Was Used And Petitioner Was Freed From The Restraint Which Is The Basis Of His Petition.

Unlike *Sibron* v. *New York,* 392 U.S. 40, (1968), footnote 8, the argument of mootness is not being raised for the first time in this Court. As soon as the state became aware of the fact that the petitioner had been released in a proceeding in Family Court, it informed the Rhode Island Supreme Court. It is clear from that court's opinion that it was the action of the Family Court which rendered the case moot in the Supreme Court.

Petitioner quotes *Carafas* v. *LaVallee,* 391 U.S. 234 (1968) and *Sibron* v. *New York,* supra, in support of his argument that the issue in the present case is not moot. However, *Carafas* was a case involving the Federal Habeas Corpus statute which requires that the applicant must be in custody when the application is filed. Moreover, this Court said at page 238:

> "The substantial issue, however, which is posed by *Parker* v. *Ellis,* is not mootness in the technical or constitutional sense, but whether the statute defining the habeas corpus jurisdiction of the federal judiciary in respect of persons in state custody is available here ...."

In the present case the issue is mootness in the "technical, constitutional sense".

In Sibron, this Court qualified *St. Pierre* v. *United States,* 319 U.S. 41 (1943) by saying at page 57:

> "*St. Pierre* v. *United States,* supra, must be read in light of later cases to mean that a criminal case is moot only if it is shown that there is no possibility that any collateral legal consequences will be imposed on the basis of the challenged conviction..."

It is interesting to note also that *Sibron* was not a habeas corpus case but was an appeal of Sibron's conviction in the New York court.

The petitioner had not shown that he will suffer any "collateral legal consequences" as a result of his "challenged conviction" because he is a juvenile and because he is not challenging his conviction. As a juvenile he can not be convicted of a crime and he has no record (14-1-40, General Laws of Rhode Island, 1956, See appendix). He was originally detained at the training school upon his plea of guilty and he has never questioned that "conviction". His attack has been upon his transfer from the training school to the adult institution. Now he claims that the validity of the statute and the validity of the actions of the administrative officers cannot be challenged unless the petitioner remains at the adult institution while his petition is pending. This argument is specious because the Rhode Island Supreme Court is not the only court in which he can question the statute in question. Why not question its validity in family court? He has certainly availed himself of that court's jurisdiction many times. Why not avail himself of the Rhode Island Superior Court with its concurrent jurisdiction with the Supreme Court in habeas corpus petitions. (10-9-3, General Laws of Rhode

Island, 1956). If either of these two courses had been selected, we believe that the petitioner would have had a decision during the five months he was held at the adult institution.

Furthermore, Rhode Island has adopted the Uniform Declaratory Judgments Act which provides that "any person whose rights ... are affected by a statute ... may have determined any question ... of validity arising under the ... statute." (9-30-2, General Laws of Rhode Island, 1956, as amended).

The controlling point here, we believe, is what action would now be required by the Rhode Island Supreme Court if this case is not moot. There is no challenged conviction upon which the court can act. The court cannot order the petitioner freed from restraint — he is already free. The Rhode Island Supreme Court is being asked to act in a vacuum because the petitioner would like to test the constitutionality of 13-4-12. The respondent submits there are other and better ways to do it. That leads to another point. The respondent named in this petition is Harold V. Langlois, Warden. Harold V. Langlois is the warden of the adult institution. He had nothing to do with the transfer of the petitioner other than to receive him when he was transferred to the adult institution. It is difficult to conceive of any order the Rhode Island Supreme Court could issue as to the warden which would be meaningful in the determination of this case. Especially since the last word given by the petitioner as to his whereabouts is that as of October 12, 1968 he was on "a runaway status" from the training school. (letter, Petitioner's Appendix D).

III. 13-4-12, General Laws of Rhode Island, 1956, as Amended, is not Unconstitutional.

(b) A Fortiori, a Transfer in Compliance With Said Statute is a Constitutional Application of the Statute.

In order for the Rhode Island court to hold 13-4-12 un-

constitutional, it had to overrule *Long* v. *Langlois,* supra, which was decided in 1961, admittedly prior to *Kent* v. *United States,* 383 U.S. 541, (1966); and *In re Gault,* 387 U.S. 1, (1967).

But, *In re Rich,* 125 Vt. 373, 216 A.2d 266, (1966), cited by the petitioner, was decided in January of 1966, two months prior to the Kent decision. *State* v. *Owens,* —— Kan. ———, 416 P.2d 259, (1966) was decided after *Kent* but no mention is made of *Kent.* Moreover, *State* v. *Owens* is not in point at all because that case involved the authority of a juvenile court judge to confine juveniles to an adult institution *in the first instance.* It is that power the court is objecting to in the quote reproduced by petitioner at page 6 of his brief. Our point is that both Kansas and Vermont follow a different rule than outlined in *Long* v. *Langlois* and not because of *Kent* and *Gault.*

There are cases in other jurisdictions following the rule outlined in *Long* v. *Langlois,* supra. In *Wilson* v. *Coughlin,* ——— Iowa ———, 147 N.W. 2d 175, (1966), although the majority opinion does not mention *Kent,* the dissent quotes from it at length. It is clear then that *Kent* was before the court for consideration. In *Shone* v. *State,* ——— Me. ———, 237 A.2d 412, (1968), both the *Gault* and *Kent* cases are discussed, and the court, citing *Long* v. *Langlois* at page 180, concludes that there is no due process violation in the transfer of a juvenile from an institution for juveniles to an adult institution.

In *State* v. *Shone,* supra, a juvenile aged 15 was adjudged to have committed a juvenile offense by reason of his breaking and entering and committing larceny and was committed to the Boys' Training Center. He was transferred from the center to the Reformatory for Men for incorrigibility. Habeas corpus was brought based upon the same arguments as advanced by petitioner in the instant case. The court held at page 415:

> "Our transfer statute does recognize also that in certain circumstances sterner treatment and better security than are available in a training center for youthful offenders must replace the benevolent attitude initially displayed toward the juvenile delinquent. When a boy wilfully and presistently refuses to obey the rules and regulations of the center or if his continued presence therein may seriously impair its well-being, the whole purpose of the juvenile law would be in jeopardy and the legislative goal completely frustrated, if administrative authorities in charge had not the power to remove such recalcitrant or offensive inmate. The statute permits expulsion of those who insist upon the disruption of the institution's program of education and rehabilitation, not so much as a measure of punishment to the individual youth, but rather as a device for the protection of the juvenile center itself in the interest and general welfare of all those who submit willingly and obediently to its humanitarian curriculum."

In *Wilson* v. *Coughlin,* supra, the ensuing quote at page 177 shows how close in fact situation, the *Wilson* case is to the present case:

> "Being convinced petitioner's presence at the school would not be conducive to his welfare or the welfare of the other inmates of the school, the authorities decided he should be transferred to the reformatory for custodial care and treatment. On the 12th day of May, 1966, this application for such transfer was granted, and since that time he has been cared for in that correctional institution. Apparently the change of place of confinement is not to his liking and he asks us to find the transfer invalid."

After discussing the facts, the court then went on to say that, as in our case, there was no contention that the authorities had not complied with the provisions of the transfer statute. The court continued at page 179:

> "It must, therefore, be concluded petitioner's commitment to the state board of control for care and treatment was perfectly legal, was not criminal in nature, and left it in the position of his parent. Section 218.91 permitted the board, as such, to transfer an incorrigible child to the reformatory for his own benefit and protection, and in order to guard against any hasty or arbitrary action requiring approval of the district court before the transfer was completed.
> In making this transfer, the board is presumed to be performing a duty imposed upon it, that of restraint, education and reformation. It is not restraining the natural liberty of the child, but is placing him under a natural restraint, a restraint so far as is practicable as should be exercised by a parent. In other words, the severity of the restraint is governed entirely by the actions of the child resisting parental authority. It is not like the unnatural restraint of one convicted of a crime where the restraint is punishment. Rather it is only for so long as the child needs a firm restraining hand, and it may end any time the child shows a willingness to behave."

The Court not only cited *Long* v. *Langlois* case, as above, but went on to quote from it at length at page 180. It is also interesting to note the similarity of the transfer statutes in that the Iowa statute requires approval of the district court and the Rhode Island statute requires notification to the family court.

We reiterate, then, our previous argument — there is

no constitutional issue involved in an administrative transfer such as transpired in the instant case. The *Kent* and *Gault* cases have not changed the basic law involving such transfers. We are a step removed from *Kent* and *Gault* in the instant case, the hearing to adjudge petitioner a delinquent or wayward is not being attacked, only his transfer from one institution to another. The petitioner has failed to show that *Kent* and *Gault* have changed the basic premise of the *Long* case, i.e., that there is no constitutional issue involved in the transfer of a juvenile from a juvenile institution to an adult institution.

In closing, we note that the statute involved, 13-4-12, was amended in 1963, presumably, after the legislators had digested *Long* v. *Langlois* (R.I.P.L. 1963, Ch. 173, § 1). The only addition made was of two sentences, one providing for notification to the family court of a transfer, and the other providing for separation of the minor from the other inmates. There was no addition of a requirement of a hearing.

Conclusion

For the foregoing reasons the respondent asks that the petition for certiorari be denied.

Respectfully submitted,
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Appendix A

CHAPTER 14 — PROCEEDINGS IN JUVENILE COURT

14-1-40. Adjudication Not Having Effect Of Conviction. (1956 G.L.)

No adjudication upon the status of any child in the jurisdiction of the court shall operate to impose any of the civil disabilities ordinarily resulting from a conviction, nor shall any child be deemed a criminal by reason of such adjudication, nor shall any child be charged with or convicted of a crime in any court, except as provided in this chapter. The disposition of a child or any evidence given in the court shall not be admissible as evidence against the child in any case or proceeding in any other court, nor shall such disposition or evidence operate to disqualify a child in any future civil service application, examination or appointment.